




# DEPARTMENT OF MENTAL HEALTH POLICY/PROCEDURE

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APPROVED BY:  Director	SUPERSEDES <b>202.26</b> <b>01/01/2003</b>	ORIGINAL ISSUE DATE <b>01/01/2003</b>	DISTRIBUTION LEVEL(S) <b>1, 2</b>

## PURPOSE

- 1.1 To establish Department of Mental Health (DMH) responsibilities for maintaining confidentiality of client information.
- 1.2 To assure all applicable County, State and Federal laws, rules and regulations pertaining to confidentiality are appropriately incorporated into DMH operations.
- 1.3 To assure all pertinent sources of information within the purview and responsibility of DMH are maintained and shared in accordance with all applicable confidentiality policies, regulations and laws.

## POLICY

- 2.1 DMH shall ensure and protect the privacy and confidentiality of all sources of client information in accordance with all applicable County, State and Federal laws, policies and procedures, including but not limited to:
  - 2.1.1 All information and records obtained in the course of providing services to voluntary and involuntary recipients of specified services, including mental health, community mental health, admissions and judicial commitments to mental institutions. (State of California Welfare and Institutions Code [WIC] Section 5328)
  - 2.1.2 All Protected Health Information (PHI) as specified in the Health Information Portability and Accountability Act of 1996 (HIPAA). (HIPAA 45 CFR 160.103 and 164.500)
- 2.2 Employees shall take personal responsibility to ensure they understand and use current and relevant confidentiality laws, regulations and guidelines as applicable to their job responsibilities and duties. For purposes of this policy, the term "employee" is used broadly and is defined to mean any permanent or temporary employee, temporary agency or locum tenens employee, persons employed



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under contract or purchase of service agreement, unpaid students, interns, volunteers and any other persons who represent the Department in the course of their work duties.

- 2.3 Confidentiality of client information shall be maintained in all formats, such as paper, electronic mail, computerized information systems, photographs, audio and video recordings communication with media and other verbal and non-verbal (gesturing, etc.) communication, in keeping with all applicable laws, regulations and procedures.
- 2.4 Confidentiality shall be assured without compromising applicable legal rights of access for information by any appropriate party, including employees, clients, family, professionals and agencies or other pertinent groups.
- 2.5 Each Program/Unit Manager shall be responsible for enforcing all confidentiality policies and regulations within his/her scope of responsibility.

### **PROCEDURE**

- 3.1 All County employees, including students, volunteers and interns, shall review, sign and abide by all applicable confidentiality oaths.
- 3.2 Confidentiality shall be applied to the use, dissemination or release of all information and records in the course of providing services to either voluntary or involuntary recipients as specified in the State of California W&I Code, Section 5328. All information and records developed in the course of providing services shall be deemed confidential unless otherwise indicated.
- 3.3 Employees shall never access or use confidential and/or Sensitive and/or Protected Healthcare Information (PHI) with anyone who does not have the "need to know". This shall include, but not be limited to, use and storage of passwords in a manner that assures they are not shared with unauthorized persons.
- 3.4 Release of client information to any party shall be carried out only upon completion of a valid and current written authorization for use and disclosure. Exceptions shall be made only when release without client/legal representative



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consent is mandated by legal statute, or when communication without such written consent is legally authorized as specified in W&I Code 5328 and HIPAA Standards as described in DMH Policy Practices Notice.

3.5 Situations mandating release of information with or without consent include, but are not limited to, the following:

3.5.1 By a mandated reporter who has knowledge of or observes a child in his/her professional capacity or within the scope of his/her employment whom he/she knows or reasonably suspects has been the victim of child abuse (Penal Code Section 11166). Refer to DMH Policy 303.02 "Reporting Suspected Child Abuse and Neglect" for specific procedures.

3.5.2 By a mandated reporter who encounters suspected elder or dependent adult abuse or neglect. Refer to DMH Policy 303.03 "Reporting Suspected Elder and Dependent Adult Abuse and Neglect" for specific procedures.

3.5.3 When the patient, in the opinion of his/her psychotherapist, presents a serious danger to a reasonably identified victim or victims. Refer to DMH Policy 303.01 "Duty or Warn and Protect Third Parties in Response to a Threat (Tarasoff Decision)".

3.5.4 Upon the receipt of a properly served subpoena. Subpoenas for consumer (client) records shall be referred to:

Custodian of Records  
Standards and Records Division  
550 S. Vermont Ave., 10<sup>th</sup> Floor  
Los Angeles, CA 90020

3.6 Employees shall refer to the DMH Medical Records Manual, consult with appropriate supervisory personnel and request consultation from the DMH Custodian of Records regarding specific confidentiality matters.

3.7 Information and records obtained in the course of providing services may be shared in communications between qualified professionals in the provision of



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services or appropriate referrals (WIC, Section 5328). Among employees, client records or information contained in such records may be released to DMH employees when they are performing their County duties and such information is needed in the fulfillment of their responsibilities.

- 3.8 Employees who receive requests for treatment information from consumers and/or family members shall refer to DMH Policy 104.03 "Client/Personal Representative Access to Mental Health Records" [\[NOTE: This policy has been deleted\]](#) or DMH Policy 300.05 "Providing Notification and Patient Information to Family Members" for specific guidelines.
- 3.9 Employees shall not make use of confidential information and records relative to DMH clients in connection with outside work or business interests. Confidential information possessed by DMH and required by professional clinicians in carrying out private services to clients shall be obtained only through appropriate channels. See DMH Policy 608.02 "Conflict of Interest".
- 3.10 Confidentiality shall be maintained in all programs that are collaborative in nature between DMH and various departments and service delivery systems (e.g., drug and alcohol treatment, developmental disabilities, health services) in keeping with all applicable statutes and regulations. Programs requiring such collaboration across service delivery systems shall develop and implement an appropriate interagency confidentiality policy, such as a Memorandum of Understanding, Trading Partner Agreement or other appropriate document or mechanism to assure all applicable regulations, statutes and procedures regarding confidentiality across all systems are adequately addressed.
- 3.11 Employee shall also apply all pertinent confidentiality guidelines to documents not typically included in a clinical record, such as telephone calls to ACCESS or Patients' Rights, and interpreter services as well as all information maintained in computer or hand tally databases/logs, such as telephone number, name, address and social security number.
- 3.12 Employees shall follow the appropriate procedures for maintaining confidentiality in the reporting of incidents involving injuries, deaths and alleged patient abuse in keeping with DMH Policy 303.05 "Reporting Clinical Incidents Involving Intentional Injuries, Deaths, Alleged Client Abuse and Possible Malpractice".



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- 3.13 Employees shall assure that client records are distributed, maintained and stored in a manner that will assure access only to those employees authorized to review records. Each program/center manager shall regularly monitor operations to assure client records are distributed and secured in a manner that will assure confidentiality. See DMH Policy 401.01 "Legal Responsibility for Uniform Clinical Records".
- 3.14 Confidentiality of HIV and AIDS information as it pertains to DMH clients shall be maintained in keeping with DMH Policy 310.01 "Human Immunodeficiency (HIV) and Acquired Immune Deficiency Syndrome (AIDS) Clinical Documentation and Confidentiality".
- 3.15 Information stored in electronic data systems shall be maintained in keeping with all applicable confidentiality regulations. This shall include data from both microcomputer systems (see DMH Policy 302.09 "Confidential and Sensitive Information on Microcomputer Systems") [\[NOTE: This policy has been deleted\]](#) and Network computers/MIS (see DMH Policy 1200.05 "Networked Information Systems Usage").
- 3.16 As a condition of conducting research, employees shall maintain in keeping with DMH policy and Welfare and Institutions Code, Section 5328. This shall include a signed oath of confidentiality as per WIC 5328(e) (see DMH Policy 1400.01 "Mental Health Research Review").

### **AUTHORITY**

DMH policy 401.01 "Legal Responsibility for Uniform Clinical Records"  
DMH Policy 104.03 "Client/Personal Representative Access to Mental Health Records"  
[\[NOTE: This policy has been deleted\]](#)  
DMH Policy 300.05 "Providing Notification and Patient Information to Family Members"  
DMH Policy 1400.01 "Mental Health Research Review"  
DMH Policy 303.01 "Duty to Warn and Protect Third Parties in Response to a Threat (Tarasoff Decision)"  
DMH Policy 303.02 "Reporting Suspected Child Abuse and Neglect"  
DMH Policy 303.03 "Reporting Suspected Elder and Dependent Adult Abuse and Neglect"



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DMH Policy 303.05 "Reporting Incidents Involving Injuries, Death, Alleged Client Abuse and Possible Malpractice"

DMH Policy 310.01 "Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) Clinical Documentation and Confidentiality"

DMH Policy 302.09 "Confidential and Sensitive Information on Microcomputer Systems

[NOTE: This policy has been deleted]

DMH Policy 1200.05 "Networked Information Systems Usage"

DMH Policy 502.01 "Privacy Practices Notice"

HIPAA 45 CFR 160.103

HIPAA 45 CFR 164.400

Welfare and Institutions Code, Section 5328

### **REVIEW DATE**

This policy shall be reviewed on or before January 1, 2006.